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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/675,310	09/29/2000	Ling Thio	PA1208US	1507
22046	7590	02/23/2005	EXAMINER	
LUCENT TECHNOLOGIES INC.			JONES, PRENELL P	
DOCKET ADMINISTRATOR				
101 CRAWFORDS CORNER ROAD - ROOM 3J-219			ART UNIT	PAPER NUMBER
HOLMDEL, NJ 07733				2667

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s) <i>(initials)</i>
	09/675,310	THIO, LING
	Examiner Prenell P Jones	Art Unit 2667

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 October 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-7, 9, 10, 13, 14, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 2-7, 9, 10, 13, 14, 16 and 17 is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

***Response to Arguments***

1. Applicant's arguments with respect to claims 2-7, 9, 10, 13, 14, 16 and 17 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2, 6, 7, 9-14, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over al in view Ginzburg et al in view of Packer (US PAT. 5,802,106) and Lipa et al.

Regarding claims 2, 6, 9-13 and 16, Ginzburg discloses (Abstract, Figs. 1 and 3, col. 1, line 55 thru col. 2, line 67, col. 2, 32 thru col. 4, line 49, col. 5, line 17-44) delivery of data over a network based on determination of network parameters, the architecture includes communication between client and server, client processes data requests, wherein network client consists of a processor (analysis engine) which maybe configured to execute computer software instructions involved in performing network parameter calculations, network client contains memory which is set aside as an

internal buffer associated with parameter calculation, network client calculates numerous network parameters (URLs) in order to determine if the network has sufficient bandwidth to deliver the requested data at a desired bit rate, and that current conditions can handle data request, (col. 4, line 1-22) measurement/determination of numerous parameters as associated with time intervals is utilized, and measurements such as round trip transfer time is calculated by network client. Ginzburg is silent on monitor, memory coupled to processor containing definitions identifying fast-response. However, in analogous art, Packer (US PAT. 5,802,106) discloses rapid data rate detection in a packet communicating environment whereby there exist (Abstract, Figs. 1-3, col. 3, line 1 thru col. 5, line 67) communication among endpoints (client and server), wherein data packets such as synchronization packet (Sync packet/first packet) and acknowledgement packet (ACK packet/second packet) are communicated between client and server, characteristics/parameters are associated with packets such as packet length, packet, speed, data rate, variant time, (col. 4, line 1-67) rate detection mechanism/device is preferably placed at the end system in data paths whose speeds are infinitely fast, detection mechanism may be incorporated into computer-executable code at the client end, (col. 5, line 1 thru col. 6, line 67) calculating round-trip time (RTT) between first packet and second packet (ack packet) and Lipa discloses (Abstract, Fig. 1-3, 6-8, col. 2, line 8-67, col. 4, line 4 thru col. 5, line 67) measuring network performance and determining characteristics without interfering with system operations, wherein the architecture includes communicating in a client-server environment, whereby CPU performance and memory size of client computer are consider, client

performs processes such as performance tests over periods of time as associated with performance characteristics over a period of time as well, client CPU is coupled to memory, client is associated with a front-end that runs software, whereby performance tests and measuring of ping packets are performed, CPU monitors and analyze performance, (col. 7, line 1 thru col. 9, line 61) client front-end measures latency, round trip time associated with ping packets. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to be motivated to implement memory coupled to a processor that participates in monitoring fast response of communication in a client-server environment, whereby a node, preferably a client measures RTT delay between client and server as taught by the combined teachings of Packer (US PAT. 5,802,106 and Lipa with the teachings of Ginzburg for the purpose of optimizing transmission between devices with the aid of measuring and utilizing the round trip time delay associated with a response and to further insure that the current system conditions is equipped to handle request.

Regarding claims 3, 4 and 5, Ginzburg discloses (Abstract, Figs. 1 and 3, col. 1, line 55 thru col. 2, line 67, col. 2, 32 thru col. 4, line 49, col. 5, line 17-44) delivery of data over a network based on determination of network parameters, the architecture includes communication between client and server, client processes data requests, wherein network client consists of a processor (analysis engine) which maybe configured to execute computer software instructions involved in performing network parameter calculations, network client contains memory which is set aside as an internal buffer

associated with parameter calculation, network client calculates numerous network parameters (URLs) in order to determine if the network has sufficient bandwidth to deliver the requested data at a desired bit rate, and that current conditions can handle data request, (col. 4, line 1-22) measurement/determination of numerous parameters as associated with time intervals is utilized, and measurements such as round trip transfer time is calculated by network client, URLs (parameters/definitions) are specified by a user of a client device whereby the user selects from a list of predetermined URLs', whereby URLs are automatically generated by software running on client machine and response time processed at server.

Regarding claims 7 and 14, as indicated above, Lipa discloses (Abstract, Fig. 1-3, 6-8, col. 2, line 8-67, col. 4, line 4 thru col. 5, line 67) measuring network performance and determining characteristics without interfering with system operations, wherein the architecture includes communicating in a client-server environment, whereby CPU performance and memory size of client computer are consider, client performs processes such as performance tests over periods of time as associated with performance characteristics over a period of time as well, client CPU is coupled to memory, client is associated with a front-end that runs software, whereby performance tests and measuring of ping packets are performed, CPU monitors and analyze performance, (col. 7, line 1 thru col. 9, line 61) client front-end measures latency, round trip time associated with ping packets. Lipa further discloses (col. 8, line 47 thru col. 10,

line 67) front-end client computer consisting of latency history graph screen, which displays latency history over time, pop-up menus and round trip time.

Regarding claim 17, as indicated above, Lipa discloses (Abstract, Fig. 1-3, 6-8, col. 2, line 8-67, col. 4, line 4 thru col. 5, line 67) measuring network performance and determining characteristics without interfering with system operations, wherein the architecture includes communicating in a client-server environment, whereby CPU performance and memory size of client computer are considered, client performs processes such as performance tests over periods of time as associated with performance characteristics over a period of time as well, client CPU is coupled to memory, client is associated with a front-end that runs software, whereby performance tests and measuring of ping packets are performed, CPU monitors and analyzes performance, (col. 7, line 1 thru col. 9, line 61) client front-end measures latency, round trip time associated with ping packets. Lipa further discloses (col. 8, line 47 thru col. 10, line 67) front-end client computer consisting of latency history graph screen, which displays latency history over time, pop-up menus and round trip time, and (col. 8, line 25 thru col. 9, line 21) the delay is less than predetermined amount of time associated with the reply packet (second packet), and delay associated with ping packets is reduced.

### ***Conclusion***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 2667

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prenell P. Jones whose telephone number is 571-272-3180. The examiner can normally be reached on 9:00-5:30.

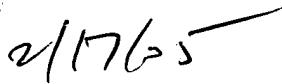
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Prenell P. Jones

  
February 17, 2005

  
CHI PHAM  
SUPERVISORY PATENT EXAMINEE  
TECHNOLOGY CENTER 2600

  
2/17/05